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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,430	11/02/2005	Magnus Ohman	P05,0115	6646

26574 7590 07/16/2007
SCHIFF HARDIN, LLP
PATENT DEPARTMENT
6600 SEARS TOWER
CHICAGO, IL 60606-6473

EXAMINER

SMITH, TERRI L

ART UNIT	PAPER NUMBER
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3762

MAIL DATE	DELIVERY MODE
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07/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/529,430	OHMAN ET AL.	
	Examiner	Art Unit	
	Terri L. Smith	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 14-29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3-25-05</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 14, 15, 18–20 and 25–29 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilli, U.S. Patent 4,869,252.

3. Regarding claims 14, 15 and 18–20, Gilli discloses a pacing pulse generator (e.g., FIG. 2, element 36), a high energy pulse generator (e.g., FIG. 1, element 17), sensing circuitry (e.g., FIG. 2, element 37), and a control unit (e.g., FIG. 1 element 16), a first mode, a second mode and automatically switching (e.g., FIGS. 4–7 and their corresponding descriptions in columns 5–8, e.g., for FIG. 5 see description in column 7, lines 22–63).

4. With respect to claims 25–29, Gilli discloses an amplitude (claim 25) (e.g., column 2, lines 39–42); deliver pacing pulses to a ventricle and atrium of a heart (claims 26–29) (e.g., column 8, lines 49–50; column 1, lines 40–42).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 16, 17, 21–24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilli, U.S. Patent 4,869,252 as applied to claims 15 and 19 above and in view of Grevis et al., U.S. Patent 4, 895,151.

8. Regarding claims 16, 17, 21, 23 and 24, Gilli discloses the essential features of the claimed invention as described above except for time intervals in a range: between one minute and fifteen minutes (claims 16 and 23), between five minutes and ten minutes (claims 17 and 24), between five minutes and fifteen minutes (claim 21). However, Grevis, et al. disclose time intervals in a range: between one minute and fifteen minutes, between five minutes and ten minutes, between five minutes and fifteen minutes (e.g., FIG. 4; ABSTRACT lines 6–9; column 6, lines 6–11) to ensure that therapy is delivered at the optimum time and duration that is comfortable and safe for a patient. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of Gilli to include time intervals in a range: between one minute and fifteen minutes, between five minutes and ten minutes, between five minutes and fifteen minutes, as taught by Grevis et al. to ensure safe and effective administration of therapy to a patient.

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9. With respect to claim 22, Gilli and Grevis et al. disclose the essential features of the claimed invention as described above except for approximately ten minutes. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include approximately ten minutes, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). (See MPEP 2144.05).

Additionally, it is well known in the art to use approximately ten minutes so that application of therapy is in accordance with the hemodynamic condition of a patient to ensure reliable therapy delivery for optimum results and patient safety.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Terri L. Smith whose telephone number is (571) 272-7146. The Examiner can normally be reached on 7:30 a.m. - 4:30 p.m..

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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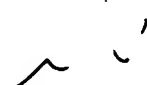
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



TLS

July 5, 2007

5 July 2007



GEORGE R. EVANISKO
PRIMARY EXAMINER

7/7/7